

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Appeal No. 17109-A of Kalorama Citizens Association, pursuant to 11 DCMR § 3100 from the administrative decision of David Clarke, Director, Department of Consumer and Regulatory Affairs, from the issuance of Building Permit Nos. B455571 and B455876, dated October 6 and 16, 2003, respectively, to Montrose, L.L.C. to adjust the building height to 70 feet and to revise penthouse roof structure plans to construct an apartment building in the R-5-D District at 1819 Belmont Road, N.W., Washington, D.C. (Square 251, Lot 45) and from the issuance of the original Building Permit No. B449218, dated March 11, 2003.

HEARING DATES: February 17, March 9 and 16, April 6 and 20, 2004
DECISION DATES: June 22, 2004, December 7, 2004, and February 1, 2005

**DATE OF DECISION ON
MOTION FOR
RECONSIDERATION AND
PARTIAL REHEARING:** December 6, 2005

**ORDER DENYING
MOTION FOR PARTIAL RECONSIDERATION AND REHEARING**

In Appeal No. 17109, the Kalorama Citizens Association ("KCA") challenged the Department of Consumer and Regulatory Affairs ("DCRA")'s decision to issue Building Permit Nos. B455571 and B455876 to Montrose L.L.C. ("Montrose"). The permits authorized Montrose to adjust the building height to 70 feet and to revise penthouse roof structure plans for a five-story apartment building ("Project") in the R-5-D Zone District, located at 1819 Belmont St., N.W. Montrose sought the permits that were the subject of the appeal after DCRA issued a stop work order on Building Permit No. 449218.

Prior to the hearing on the appeal, the Board granted KCA's motion to expand the appeal to include the decision to issue the original building permit, as well as the revised plans and related permits.

In its appeal, KCA alleged DCRA erred in issuing the permits because: the Project exceeded the maximum height and set back requirements of the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, D.C. Official Code §§ 6-601.01 to 601.09) ("Height Act"); the Project violated the roof structure set back requirements of the Zoning Regulations; and the Project exceeded the maximum Floor Area Ratio allowed by the Zoning Regulations.

The Board's final order, dated November 8, 2005, granted the appeal in part, and denied it in part. The Order explained, in detailed findings of fact and conclusions of law, that the roof deck of the building exceeded the height limitations of the Height Act, that the penthouse was

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properly set back in accordance with the Height Act and the applicable Zoning Regulations (11 DCMR §§411 and 400.7(b)), and that the Floor Area Ratio was within the matter of right limit permitted by the Zoning Regulations.

On November 18, 2005, KCA filed a timely motion for reconsideration and rehearing. KCA asserted two reasons for its motion: (1) KCA observed that in the finished building, the area characterized in the drawings as attic space was at least partially open, and therefore was more properly characterized as a “mezzanine” or a “balcony” than as an “attic”; and (2) the Office of Zoning, in response to a request by KCA, could not locate a copy of the Zoning Commission order rezoning the area from R-5-B to R-5-D, and therefore the property was improperly classified as being in the R-5-D district.

For the reasons discussed below, the Board denies the motion.

The Zoning Regulations provide that “no request for rehearing shall be considered by the Board unless new evidence is submitted that could not reasonably have been presented at the original hearing.” 11 DCMR § 3126.6.

KCA had ample opportunity to raise the issue of whether the attic was properly characterized as a mezzanine or balcony at the many hearings held in this case. KCA made several arguments and presented extensive evidence on the issue, but its arguments were rejected by the Board.

KCA also had the opportunity to raise the issue of the Zoning Map’s accuracy at the hearings, but failed to do so until after the Board issued its final decision in the case.

The Board therefore denies KCA’s motion for rehearing.

A motion for reconsideration must specifically state in what way the Board’s decision is erroneous, the grounds for reconsideration, and the relief sought. 11 DCMR 3126.4. It is well settled that motions for reconsideration may not be used to re-litigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment. *Lightfoot v. District of Columbia*, 355 F.Supp.2d 414, 421 (D.D.C. 2005) (citing 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2810.1 at 127-28 (2d ed. 1995)).

As pointed out above, KCA had the opportunity to present evidence about the attic space at the hearings in this case. KCA did, in fact, present evidence and arguments about the proper characterization of the space, but the Board did not find these arguments persuasive.

Moreover, the information underlying KCA’s latest assertion that the space is not an attic is irrelevant to the appeal. KCA asserts that observations made from the outside of the constructed building support its contention that the space is not an attic. At issue in the appeal is whether the Zoning Administrator erred in issuing the contested building permits, not whether the building as constructed, violates the Zoning Regulations. Therefore, the “new information” presented by KCA in their motion is not of consequence to this proceeding.

The Board therefore rejects KCA's first basis for its motion for reconsideration.

The next issue is KCA's assertion that the Board should grant the appeal because the Office of Zoning could not produce the Zoning Commission Order changing the zoning designation for 1819 Belmont Street and adjacent parcels from R-5-B to its current R-5-D designation, and that the Zoning Map is therefore inaccurate. KCA claims that the Board should apply the R-5-B zoning designation instead.

KCA had the opportunity to raise the issue of the Zoning Map's accuracy at the hearings, but failed to do so until after the Board issued its final decision in the case. KCA's failure to raise this issue before the Board issued a final order alone is sufficient to justify denying the motion for reconsideration.

It is undisputed that the Zoning Map shows the property is located in the R-5-D Zone District. It is not error for the Zoning Administrator to process a building permit application in accordance with that designation. If the current zoning map is in error, it may only be corrected by a rulemaking process initiated by the Zoning Commission.

The Board therefore rejects KCA's second basis for its motion for reconsideration.



Accordingly, the Board **DENIES** KCA's motion for partial reconsideration and rehearing.

VOTE: **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr.,
John A. Mann II and John G. Parsons to deny the motion for
partial reconsideration and rehearing)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring Board member approved the issuance of this order.

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning 

FINAL DATE OF ORDER: APR 04 2006

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
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BZA APPEAL NO. 17109-A

As Director of the Office of Zoning, I hereby certify and attest that on **APR 04 2006**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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